

Final Decision under § 34.52 has been rendered. Deferral is not appropriate when financial assistance under JTPA is due and payable under a previously approved application.

(1) New Federal financial assistance under JTPA includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.

(2) New Federal financial assistance under JTPA does not include assistance approved prior to the beginning of termination proceedings or increases in funding as a result of changed computations of formula awards.

§ 34.51 Hearings.

(a) *Notice of opportunity for hearing.* As part of a Final Determination, or a Notification of Breach of a Conciliation Agreement, the Director shall include, and serve on the grant applicant or recipient (by certified mail, return receipt requested), a notice of opportunity for hearing.

(b) *Complaint; request for hearing; answer.*

(1) In the case of noncompliance which cannot be voluntarily resolved, the Final Determination or Notification of Breach of Conciliation Agreement shall be deemed the Department's formal complaint.

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges.

(i) The answer must be filed within 30 days of the date of receipt of the Final Determination or Notification of Breach of Conciliation Agreement.

(ii) A request for hearing must be set forth in a separate paragraph of the answer.

(iii) The answer shall specifically admit or deny each finding of fact in the Final Determination or Notification of Breach of Conciliation Agreement. Where the grant applicant or recipient does not have knowledge or information sufficient to form a belief,

the answer may so state and the statement shall have the effect of a denial. Findings of fact not denied shall be deemed admitted. The answer shall separately state and identify matters alleged as affirmative defenses and shall also set forth the matters of fact and law relied on by the grant applicant or recipient.

(3) The grant applicant or recipient must simultaneously serve a copy of its filing on the Office of the Solicitor, Civil Rights Division, Room N-2464, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210.

(4)(i) The failure of a grant applicant or recipient to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, is deemed to be a waiver of the right to a hearing; and

(ii) Whenever a hearing is waived, all allegations of fact contained in the Final Determination or Notification of Breach of Conciliation Agreement shall be deemed admitted and the Final Determination or Notification of Breach of Conciliation Agreement shall be deemed the Final Decision of the Secretary as of the day following the last date by which the grant applicant or recipient was required to request a hearing or was to appear at a hearing. See § 34.52(b)(3).

(c) *Time and place of hearing.* Hearings shall be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to all parties and, as appropriate, the complainant. In selecting a place for the hearing, due regard shall be given to the convenience of the parties, their counsel, if any, and witnesses.

(d) *Judicial process; evidence.*

(1) The Administrative Law Judge may use judicial process to secure the attendance of witnesses and the production of documents pursuant to Section 9 of the Federal Trade Commission Act (15 U.S.C. 49).

(2) Evidence. In any hearing or administrative review conducted pursuant to this part, evidentiary matters shall be governed by the standards and principles set forth in the Uniform Rules of Evidence issued by the Department of Labor's Office of Administrative Law Judges, 29 CFR part 18.